

ORIGINAL

DMB:KLM:sg:2001V00253

FILED
HARRISBURG

MAY 15 2001

MARVE D'ANDREA, CLERK
Per.
DEPUTY CLERKUNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MARK GARNES,

Plaintiff

v.

JANET RENO, et al.,¹

Defendants

Civil No. 1:CV-00-0700
(Caldwell, J.)SECOND MOTION FOR ENLARGEMENT OF TIME

Defendant Fegley asks the Court for a fourteen-day enlargement of time, pursuant to Fed. R. Civ. P. 6(b), in which to file his responsive pleading. Defendant states the following in support thereof:

1. Plaintiff, Mark Garnes, is an inmate incarcerated at the Federal Correctional Institution in Fort Dix, New Jersey.

2. The complaint is a Bivens action against Inmate Systems Management Staff Officer Fegley employed at the Federal Correctional Institution Allenwood, in White Deer, Pennsylvania. ("FCI Allenwood") Garnes alleges that he was denied access to the courts when his legal property did not arrive with him when he was transported to the Metropolitan Detention Center ("MDC") in New

¹By Order dated February 15, 2001, the Court dismissed three of Garnes' claims for failure to state a claim upon which relief may be granted and dismissed fourteen Bureau of Prisons defendants. The Court allowed the remaining claim against defendant Fegley to proceed.

York to litigate a \$2255 motion. Garnes seeks compensatory and punitive damages.

3. A sixty-day summons was issued by the Clerk of Court on February 15, 2001, and the individual defendants were served by certified mail on March 2, 2001. On May 9, 2001, the Court granted defendant a fourteen-day extension of time in which to file its responsive pleading. An answer to the complaint is presently due on May 15, 2001.

4. The Code of Federal Regulations provides, in pertinent part, that

a federal employee . . . may be provided representation in civil, criminal, and Congressional proceedings in which he is sued, subpoenaed, or charged in his individual capacity, . . . when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or his designee determines that providing representation would otherwise be in the interest of the United States

28 C.F.R. §50.15(a).

5. Section 50.15(a)(1) sets forth the procedure of obtaining representation by a Department of Justice attorney such as the undersigned. In the instant case, the defendant is required to submit a written request to legal staff at the employee's institution. The legal department will process the paperwork and send it to the Regional Office in Philadelphia who will then forward it to the Bureau of Prisons' Central Office in Washington, D.C.. Finally, the Central Office will notify the appropriate

litigating division of the Department of Justice which, in this case, would be the Civil Division. 28 C.F.R. §50.15(a)(1).

6. If and when representation is authorized by the Civil Division, Justice Department attorneys undertake a full and traditional attorney-client relationship with the employee.

7. The undersigned has been informed that defendant's request for representation in this case has not reached its final destination with the Civil Division for consideration.

8. Without the Civil Division's approval to represent the defendant, the undersigned is unable to prepare and submit an appropriate response to the complaint on behalf of defendant.

WHEREFORE, on behalf of defendant, the United States Attorney's Office requests a fourteen-day enlargement of time until May 29, 2001, in which to adequately respond to the allegations of the complaint. Counsel certifies that she has not sought the concurrence of plaintiff because the plaintiff is a prisoner proceeding pro se. M.D. Pa. Local Rule 7.1.

Respectfully submitted,

DAVID M. BARASCH
United States Attorney



KATE L. MERSHIMER
Assistant U.S. Attorney
SHELLEY L. GRANT
Paralegal Specialist
217 Federal Building
225 Walnut Street
Post Office Box 11754
Harrisburg, PA 17108

Dated: May 15, 2001

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MARK GARNES,	:	
Plaintiff	:	
	:	
v.	:	Civil No. 1:CV-00-0700
	:	(Caldwell, J.)
JANET RENO, et al.,	:	
Defendants	:	

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

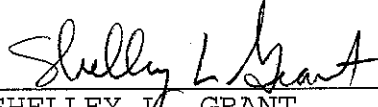
That on May 15, 2001, she served a copy of the attached

MOTION FOR ENLARGEMENT OF TIME

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

Addressee:

Mark Garnes
Reg. No. 24646-053
FCI Ft. Dix West
Unit 5811
P.O. Box 7000
Ft. Dix, NJ 08640


SHELLEY L. GRANT
Paralegal Specialist